

OCT 31 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON

U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERMAN PEREZ-GARCIA,

Petitioner - Appellant,

v.

STEPHEN F. PONTESSO, ET AL.,

Respondent - Appellee.

No. 02-15820

D.C. No. CV-00-01481-PGR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Paul G. Rosenblatt, District Judge, Presiding

Submitted October 29, 2003**
Pasadena, California

Before: KLEINFELD, WARDLAW, and W. FLETCHER, Circuit Judges.

German Perez-Garcia, a Mariel Cuban in Immigration and Naturalization
Service (“INS”) detention for over thirteen years, petitions for habeas corpus relief

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

pursuant to 28 U.S.C. § 2241. Perez-Garcia argues that he is entitled to a determination whether his removal to Cuba is reasonably foreseeable and, if it is not, that under *Zadvydas v. Davis*, 533 U.S. 678 (2001), he should be released. We deferred submission pending our decision in *Marquez v. INS*, ___ F.3d ___, 2003 WL 22156287 (9th Cir. Sept. 19, 2003), which now controls this case. In *Marquez*, we held that the *post*-IIRIRA presumptive six-month limit on the detention of admitted aliens ordered deported, and inadmissible aliens ordered removed, also applies to aliens ordered excluded under *pre*-IIRIRA law. *Id.* at *5. Because under *Marquez*, Garcia is entitled to a determination whether his removal to Cuba is reasonably foreseeable, and if it is not, to conditional release, *id.* at *8, we reverse the district court's denial of Garcia's habeas petition and remand for further proceedings consistent with our opinion in *Marquez*.

REVERSED AND REMANDED